

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ORIGINAL

BEFORE THE HONORABLE YVONNE GONZALEZ ROGERS, JUDGE

JOHN LOFTON, AN INDIVIDUAL)	
ON HIS OWN BEHALF AND ON)	
BEHALF OF ALL OTHERS)	PAGES 1 - 24
SIMILARLY SITUATED,)	
)	
PLAINTIFF,)	
)	
VS.)	NO. C 13-05665 YGR
)	
VERIZON WIRELESS (VAW) LLC,)	DEFENDANTS' MOTION TO
ET AL.,)	DISMISS
)	
DEFENDANTS.)	OAKLAND, CALIFORNIA
)	TUESDAY, MARCH 11, 2014

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFF: PRESTON LAW OFFICES
8245 NORTH 85TH WAY
SCOTTSDALE, ARIZONA 85258
BY: ETHAN PRESTON, ATTORNEY AT LAW

PARISI & HAVENS LLP
15233 VALLEYHEART DRIVE
SHERMAN OAKS, CALIFORNIA 91403
BY: DAVID C. PARISI, ATTORNEY AT LAW

FOR DEFENDANTS: CARLSON & MESSER LLP
5959 W. CENTURY BOULEVARD, SUITE 1214
LOS ANGELES, CALIFORNIA 90045
BY: CHARLES R. MESSER, ATTORNEY AT LAW

ALSO PRESENT: PATRICIA SUNAR
JONATHAN BLAVIN

REPORTED BY: RAYNEE H. MERCADO, CSR NO. 8258

PROCEEDINGS REPORTED BY ELECTRONIC/MECHANICAL STENOGRAPHY;
TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION.

RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (510) 451-7530

1 TUESDAY, MARCH, 11, 2014

2:07 P.M.

2 P R O C E E D I N G S

3 **THE CLERK:** CALLING CIVIL ACTION 13-5665, LOFTON
4 VERSUS VERIZON WIRELESS.

5 COUNSEL, PLEASE COME FORWARD AND STATE YOUR APPEARANCES.

6 **MR. PRESTON:** ETHAN PRESTON ON BEHALF OF PLAINTIFF
7 JOHN LOFTON.

8 **MR. PARISI:** GOOD AFTERNOON, YOUR HONOR. DAVID
9 PARISI ALSO ON BEHALF OF PLAINTIFF JOHN LOFTON.

10 **THE COURT:** GOOD AFTERNOON.

11 **MR. MESSER:** CHARLES MESSER FOR THE DEFENDANT VERIZON
12 WIRELESS. WITH ME AT THE TABLE, I HAVE PATRICIA SUNAR, WHO IS
13 THE ASSISTANT GENERAL COUNSEL OF VERIZON WIRELESS; AND
14 JONATHAN BLAVIN OF MUNGER, TOLLES & BLAVIN, LONG-TIME
15 CORPORATE COUNSEL FOR VERIZON WIRELESS.

16 **THE COURT:** ALL RIGHT. WHO'S GOING TO ARGUE THE
17 MOTIONS?

18 **MR. MESSER:** I WILL ON BEHALF OF VERIZON WIRELESS,
19 YOUR HONOR.

20 **MR. PRESTON:** I WILL, YOUR HONOR.

21 **THE COURT:** OKAY. WELL, LET ME TELL YOU BOTH, THEN,
22 WHERE I STAND COMING INTO THIS.

23 WITH RESPECT TO THE MOTION TO DISMISS, MY INCLINATION IS
24 TO DENY IT.

25 WITH RESPECT TO THE MOTIONS FOR PRELIMINARY INJUNCTION, MY

1 INCLINATION IS TO DENY IT.

2 LET'S START WITH THE MOTION TO DISMISS. FIRST OF ALL,
3 PROCEDURALLY, WHY ARE WE HERE? YOU'VE HAD MULTIPLE
4 OPPORTUNITIES TO RAISE THESE ISSUES WITH JUDGE BRICK; YOU
5 NEVER DID. SO WHY NOW?

6 **MR. MESSER:** BECAUSE THIS IS THE FIRST COMPLAINT THAT
7 PLEADED THE VERIZON POLICY AS PART OF THE COMPLAINT. AND SO
8 IT IS THE FIRST PROCEDURAL WAY, SHORT OF SUMMARY JUDGMENT, IN
9 WHICH TO RAISE THIS ISSUE.

10 BECAUSE BEFORE, THE VERIZON POLICY WAS PART OF THE
11 COMPLAINT, WE JUST HAD A GENERAL ALLEGATION THAT THIS -- THE
12 VERIZON'S POLICY VIOLATED THE IPA. BUT THE VERIZON POLICY
13 CRYSTALIZES THE NARROW CLASSES OF PERSONS TO WHOM THE
14 DISCLOSURE WAS NOT MADE.

15 PERSONS WHO WERE CALLED SAID, I'M CHARLES MESSER. ARE YOU
16 CHARLES MESSER? NO, I'LL GET HIM. I'M CHARLES MESSER. THE
17 FIRST PERSON ON THE PLAINTIFF'S THEORY IS ENTITLED TO
18 STATUTORY DAMAGES. WE ASSERT THAT THAT IS AN IMPLAUSIBLE
19 INTERPRETATION OF THE CALIFORNIA IPA.

20 SECOND CATEGORY, CHARLES MESSER IS THERE? NO. CAN I --
21 LEAVE A MESSAGE TO CALL HIM. SURE. TAKE DOWN THIS
22 INFORMATION, CALL VERIZON WIRELESS. NO DISCLOSURE. AGAIN, NO
23 PRIVATE INFORMATION. WE DON'T THINK THAT'S WHAT THE
24 LEGISLATURE INTENDED, FOR THAT TO BE PUNISHABLE BY A \$5,000
25 STATUTORY PENALTY FOR EACH RECORDING BECAUSE THERE'S NO

1 INVASION OF PRIVACY. AND THE THIRD EXAMPLE, THE WRONG NUMBER
2 CALL OF WHICH MR. LOFTON IS A CLASS MEMBER.

3 BUT PROCEDURALLY, THAT'S THE REASON THAT IT WAS NOT RAISED
4 BEFORE NOW BECAUSE THESE CATEGORIES OF PERSONS WERE NOT BEFORE
5 THE COURT -- WERE NOT -- WERE NOT DEFINED.

6 **THE COURT:** WELL, WHAT CATEGORY OF PERSONS WAS
7 DEFINED THEN?

8 **MR. PRESTON:** YOUR HONOR, IT'S ALWAYS BEEN A WRONG
9 NUMBER CASE. WE'VE --

10 **THE COURT:** YEAH. I MEAN, THE FUNDAMENTAL UNDERLYING
11 FACTS DIDN'T CHANGE. THIS STATUTE WAS PLEADED. YOU HAD
12 MULTIPLE ROUNDS OF DEMURRERS IN FRONT OF JUDGE BRICK, WHO IS
13 PURELY AND EMINENTLY CAPABLE OF INTERPRETING A CALIFORNIA
14 STATUTE. THE ONLY THING THAT CHANGED WAS THAT THEY ADDED A
15 FEDERAL CAUSE OF ACTION, WHICH IS WHAT BROUGHT YOU HERE.

16 **MR. MESSER:** RIGHT.

17 **THE COURT:** SO DID THE FACTUAL ALLEGATIONS CHANGE?

18 **MR. MESSER:** WELL, THEY GOT MORE SPECIFIC.

19 **THE COURT:** IS THAT TRUE?

20 **MR. PRESTON:** NOT MATERIALLY. WE DID ADD THE POLICY.
21 BUT THIS HAS ALWAYS BEEN A WRONG NUMBER CASE. IN EVERY SINGLE
22 VERSION OF THIS COMPLAINT, WE HAVE ALLEGED, LOOK, IT'S ALL THE
23 PEOPLE WHO ARE NON-SUBSCRIBERS. NOBODY WHO'S A SUBSCRIBER.
24 THAT'S ALWAYS BEEN THE CASE. THEY'RE --

25 THE DISTINCTION HE'S -- MR. MESSER IS RELYING ON IS, WELL,

1 IT'S -- THIS IS THE FIRST TIME WE'VE DISCUSSED, YOU KNOW,
2 NONCONSUMERS. NO, MA'AM. WE HAVE ALWAYS ALLEGED A CLASS OF
3 NONCONSUMERS. MR. LOFTON HAS ALWAYS EXPLICITLY BEEN ALLEGED
4 TO BE NOT A -- A SUBSCRIBER OF VERIZON.

5 **THE COURT:** WELL, LET'S LOOK AT THE STATUTE.

6 THERE HAVE BEEN A NUMBER OF FEDERAL COURTS WHO'VE
7 SPECIFICALLY LOOKED AT 637.2 AND AGREE WITH YOUR
8 INTERPRETATION. CERTAINLY, WHILE FLANAGAN DID NOT DEAL WITH
9 UNDERLYING CONCERN ABOUT 637.2, IT DID ADDRESS THE COHERENT
10 SCHEME THAT WAS CONTEMPLATED UNDER -- IN THAT PARTICULAR
11 SECTION AND SUGGESTED THAT THERE WAS A -- NO DIFFERENCE IN
12 TERMS OF THE REQUIREMENT THAT YOU'RE ASKING FOR UNDER 637.2 AS
13 CRAFTED WITH 632.

14 **MR. MESSER:** WELL --

15 **THE COURT:** AND -- AND I SEE NOTHING IN THE -- YOU
16 GAVE ME NO LEGISLATIVE HISTORY OTHER THAN, YOU KNOW, LAW
17 ACCORDING TO THE DEFENDANT TO SUGGEST THAT I SHOULD VEER AWAY
18 FROM WHAT THE SUPREME COURT OF CALIFORNIA HAS SUGGESTED.

19 **MR. MESSER:** WELL, YOUR HONOR, FLANAGAN WAS A 632
20 CASE AS YOU KNOW --

21 (SIMULTANEOUS COLLOQUY.)

22 **MR. MESSER:** AND WE KNOW THAT YOU WROTE THE SIMPSON
23 VS. VANTAGE HOSPITALITY CASE --

24 (SIMULTANEOUS COLLOQUY.)

25 **THE COURT:** WHICH YOU DIDN'T BOTHER TO RAISE IN YOUR

1 BRIEFING, BUT GO AHEAD.

2 **MR. MESSER:** I DID IN MY REPLY BRIEF AT LENGTH. I
3 DISCUSSED IT. AND -- AND, IN FACT, THE ORIGINAL MOTION QUOTED
4 THE SECTION ON THE RULES OF STATUTORY INTERPRETATION. WE KNOW
5 YOU WROTE THIS DECISION. WE AGREE WITH THAT DECISION.

6 WE DISAGREE --

7 **THE COURT:** WELL, THEN FOR PRACTICE PURPOSES, BY THE
8 WAY, TAKE A PRACTICE TIP, TELL THE JUDGE UP FRONT IN YOUR
9 MOTION, DON'T WAIT TILL YOUR REPLY BRIEF BECAUSE YOUR
10 CREDIBILITY SUFFERS. BUT GO AHEAD.

11 **MR. MESSER:** WELL, I'M MAKING AN ARGUMENT FOR THE
12 RECORD. I'LL KEEP IT VERY SHORT. WE ARGUED -- THE POINT OF
13 OUR MOTION WAS THAT JUST BECAUSE CONFIDENTIALITY IS NOT PART
14 OF SECTION 632.7 DOES NOT MEAN THAT PRIVACY IS NOT A PART OF
15 IT. AND THAT PRIVACY AND CONFIDENTIALITY ARE DIFFERENT
16 BECAUSE IF THEY WERE THE SAME, COURTS WOULD BE SEALING COURT
17 RECORDS LEFT AND RIGHT.

18 WE KNOW PRIVACY IS BROADER, AND THE PURPOSE OF THE STATUTE
19 IS -- IS SET FORTH IN SECTION 630 TO PROTECT PRIVACY --

20 **THE COURT:** RIGHT. AND IT WAS INTERESTING TO ME THAT
21 YOU QUOTED BRANDEIS, 'CAUSE I WENT BACK TO THAT WONDERFUL 1890
22 LAW REVIEW ARTICLE IN WHICH BRANDEIS TALKED ABOUT THE RIGHT OF
23 PRIVACY. AND WHAT I LOVED ABOUT IT WAS THAT BRANDEIS SAID
24 THAT THE RIGHT OF PRIVACY SHOULD BE DEFINED AS, QUOTE, THE
25 RIGHT TO BE LET ALONE, END OF QUOTE.

1 INTERESTING. DON'T RECORD MY PHONE CALLS WHEN YOU CALL
2 ME. LEAVE ME ALONE. WHAT COULD BE MORE PRIVATE THAN THAT?
3 AND WHY CAN'T CALIFORNIA HAVE A VERY BROAD APPROACH TO THESE
4 THINGS? THIS IS NOT THE WAY IT IS IN EVERY OTHER STATE, BY
5 THE WAY. AND I UNDERSTAND THAT.

6 BUT CALIFORNIA HAS CHOSEN WITH VERY BROAD LANGUAGE TO SAY
7 THAT NO, YOU CAN'T RECORD OUR PHONE CALLS.

8 **MR. MESSER:** CALIFORNIA CAN ABSOLUTELY DEFINE BROAD
9 PRIVACY RIGHTS. WE HAVE NO QUARREL WITH THAT. THE LEGAL
10 ARGUMENT IS WHETHER 632.7 CONTAINS -- IS ITSELF CONTAINS SOME
11 PRIVACY RIGHT OR WHETHER YOU MUST TURN TO SOME INTRINSIC
12 SOURCE OF PRIVACY LIKE A STATUTE CASE OR THE CONSTITUTION.

13 **THE COURT:** AND WHERE DOES IT SAY THAT? BUT WHERE --
14 YOU HAVE NO LAW. YOU HAVE NO LAW TO SUPPORT YOU. AND -- AND
15 THE BASIC APPROACH TO DEALING WITH STATUTORY CONSTRUCTION IS
16 TO LOOK AT THE WORDS. SO IF THAT -- IF THAT'S THE CASE,
17 WHERE'S THE -- WHERE IS THE LEGISLATIVE HISTORY? YOU DIDN'T
18 GIVE IT TO ME.

19 **MR. MESSER:** I DID NOT.

20 **THE COURT:** IS THERE ANY? DID YOU LOOK?

21 **MR. MESSER:** I DID.

22 **THE COURT:** AND SO THAT --

23 (SIMULTANEOUS COLLOQUY.)

24 **THE COURT:** AND SO IT DIDN'T SUPPORT YOUR VIEW
25 EITHER.

1 **MR. MESSER:** DOESN'T SAY IT EITHER WAY. WE RELY ON
2 THE SUPREME COURT OPINION IN KEARNEY ON SECTION 630 TO SAY
3 THAT THE LAW SHOULD BE INTERPRETED IN LIGHT OF ITS PURPOSE.
4 ITS PURPOSE IS TO PROTECT PRIVACY.

5 WE POINTED OUT IN OUR PAPERS HOW, IN OUR VIEW, THE OLD
6 VERIZON POLICY BETTER PROTECTED THE PRIVACY OF OUR CUSTOMERS
7 THAN THE PLAINTIFFS' INTERPRETATION. WE THINK THE -- THE IPA
8 SHOULD BE SO CONSTRUED.

9 **THE COURT:** WELL, YOU KNOW, IT'S INTERESTING BECAUSE
10 IF SOMEBODY CALLED A FEDERAL JUDGE AND TOOK A NICE LITTLE
11 SNIPPET OF OUR VOICE AND RECORDED IT AND THEN USED IT, EVEN IF
12 IT WAS LIKE, NO, I DON'T AGREE, THE NEXT THING WE KNOW OUR
13 VOICE IS THERE BEING USED BY SOMEONE. WE COULD NOT USE
14 PENAL CODE SECTION 637.2 TO SAY, YOU RECORDED MY VOICE WITHOUT
15 TELLING ME?

16 WHAT DO YOU THINK ABOUT THAT? THAT WOULD NOT BE -- I
17 DON'T KNOW. I THOUGHT ABOUT THAT ONE AS I WAS THINKING ABOUT
18 YOUR CASE.

19 **MR. MESSER:** UNLESS -- IF THAT WAS A NON-PRIVATE
20 CONVERSATION, THAT WOULD NOT BE A VIOLATION OF THE ACT IN OUR
21 VIEW.

22 **THE COURT:** ANY COMMENTS?

23 **MR. PRESTON:** SIMPLY THIS, YOUR HONOR: PRIVACY
24 ENCOMPASSES LOTS OF DIFFERENT THINGS. SOME ASPECTS OF PRIVACY
25 MEAN THAT -- PROTECT -- CONCERN THE REASONABLE EXPECTATION OF

1 PRIVACY. DID YOU KNOW THAT YOU WERE BEING RECORDED? DID YOU
2 EXPECT TO BE RECORDED?

3 RIBAS AND CLARK, WITH RESPECT TO THE INVASION OF PRIVACY
4 ACT, IS PRETTY CLEAR. IT -- THE POINT OF THIS STATUTE IS
5 THE -- THE RIGHT TO PROTECT -- THE RIGHT TO CONTROL THE
6 DISSEMINATION OF YOUR OWN VOICE, AND THAT'S WHAT'S AT ISSUE.
7 AND SO WE DON'T ACTUALLY DISAGREE. THE -- THIS HAS --

8 **THE COURT:** WELL, IT DOESN'T SAY --

9 (SIMULTANEOUS COLLOQUY.)

10 **THE COURT:** IT DOES NOT SAY "VOICE." THE WORD IS
11 "COMMUNICATION." PARTIES TO A COMMUNICATION IS WHAT IT
12 CONCERNS. IT IS A COMMUNICATION TRANSMITTED BETWEEN TWO
13 PHONES OF A PARTICULAR NATURE. SO IT DOESN'T SAY "VOICES."

14 **MR. PRESTON:** THAT'S THE -- THAT'S RIGHT. THAT'S
15 STATUTE.

16 I'M REFERENCING RIBAS AND CLARK. AND, ACTUALLY, IT'S
17 RIGHT TO CONTROL FIRST-HAND DISSEMINATION OF HIS STATEMENTS,
18 WHICH IS NOT DISSIMILAR FROM WHAT YOUR HONOR IS SAYING. IT'S
19 A COMMUNICATION FURTHER LIMITED IN THAT CONTEXT OF THE
20 STATUTE. IT MATTERS WHETHER OR NOT YOU'RE ON A CELL PHONE OR
21 NOT.

22 **THE COURT:** SO HOW IS "COMMUNICATION" DEFINED? IS IT
23 EVER DEFINED IN A WAY THAT SUPPORTS EITHER ONE OF YOUR
24 PERSPECTIVES? COMMUNICATION GENERALLY, NOT CONFIDENTIAL
25 COMMUNICATION BECAUSE THE SUPREME COURT HAS MADE -- HAS STATED

1 EXPLICITLY WHAT THAT REFERS TO; THAT IS, THE SUPREME COURT OF
2 CALIFORNIA.

3 THE PENAL CODE DOESN'T DEFINE "COMMUNICATION." REMEMBER
4 PEOPLE CAN BE SENT TO JAIL FOR VIOLATING THIS STATUTE, SO IT'S
5 NOT JUST ABOUT MONEY. SOMEONE CAN BE SENT TO JAIL. SO WHAT
6 DOES "COMMUNICATION" MEAN?

7 **MR. PRESTON:** I WOULD SUGGEST THAT COVERS VOICE. IT
8 INCLUDES VOICE. IT PROBABLY COVERS BEYOND THAT SOMEBODY --
9 THIS IS DATING ME, BUT SOMEBODY USES A MODEM TO CALL UP AOL.
10 IT'S A DIAL-UP, AND THERE, SOMEBODY TAPES THAT CALL. AND YOU
11 COULD, IN THEORY, SEE WHAT THE PERSON WAS DOING OVER THE LINE.
12 THAT WOULD BE A COMMUNICATION. ANY KIND OF TRANSFER OF
13 INTELLIGENCE OR DATA, INFORMATION.

14 I -- I THINK THE DICTIONARY DEFINITION OF THE WORD
15 "COMMUNICATION" IS SUFFICIENT FOR MR. LOFTON TO PREVAIL ON THE
16 MOTION.

17 **THE COURT:** COUNSEL?

18 **MR. MESSER:** THERE HAVE BEEN CASES -- AND I DON'T --
19 NOT REALLY PREPARED TO CITE THE CASES TODAY, ALTHOUGH I COULD
20 IF THE COURT IS INTERESTED, FIND THEM, I BELIEVE, THAT HAVE
21 NARROWED THE CONCEPT OF "COMMUNICATION," BUT I DON'T THINK IN
22 THE CONTEXT OF THE IPA. I THINK IN THE CONTEXT OF OTHER LAWS,
23 AND SO IT'S NOT NECESSARILY EVERY CONVERSATION THAT
24 CONSTITUTES A COMMUNICATION.

25 **THE COURT:** CRIMINAL STATUTES HAVE TO GIVE NOTICE TO

1 PEOPLE OF THE LIMITATIONS ON THEIR CONDUCT IF THEY'RE GOING TO
2 BE USED FOR PURPOSES OF PUTTING THEM IN JAIL. SO IS IT
3 PARTICULAR ENOUGH?

4 IF I SAY, "HELLO," BEFORE YOU TELL ME THAT THE
5 CONVERSATION IS BEING RECORDED, IS THAT A VIOLATION OF THE
6 STATUTE?

7 **MR. MESSER:** WE WOULD SAY NO.

8 **THE COURT:** I KNOW YOU WOULD SAY NO. I'M NOT ASKING
9 YOU.

10 **MR. PRESTON:** I WOULD SAY YES.

11 **THE COURT:** SO BEFORE YOU EVEN HAVE AN OPPORTUNITY --
12 I PICK UP THE PHONE AND SAY "HELLO" -- SO HOW DOES THE PERSON
13 ON THE OTHER SIDE OF THE PHONE HAVE AN OPPORTUNITY TO TELL ME
14 THAT MY PHONE CALL IS BEING RECORDED IF I HAVEN'T GIVEN THEM
15 THAT OPPORTUNITY.

16 **MR. PRESTON:** THAT IS VERY SIMPLE, YOUR HONOR. YOU
17 DON'T TAPE THE CALL UNTIL THEY AGREE THAT YOU MAY DO SO.

18 **THE COURT:** WHAT?

19 **MR. PRESTON:** YOU DON'T TAPE THE CALL UNTIL THE OTHER
20 PERSON AGREES YOU MAY DO SO.

21 **THE COURT:** RESPONSE TO THAT.

22 **MR. MESSER:** YES. ONE, THAT TECHNOLOGY IS NOW
23 AVAILABLE BUT WAS NOT -- AND EVEN NOW JUST BEING IMPLEMENTED.

24 SECOND, A REASON THAT RECORDING CALLS IS -- HAS BECOME
25 WIDESPREAD IS -- ONE REASON IS THAT THERE HAVE BEEN RECURRENT

1 CLAIMS, PARTICULARLY IN THE DEBT COLLECTION FIELD, THAT DEBT
2 COLLECTORS HAVE MADE STATEMENTS TO THE PERSONS WHO OWE MONEY
3 THAT ARE FALSE, THAT ARE THREATENING, THAT ARE VIOLATIONS OF
4 OTHER FEDERAL LAWS LIKE THAT FAIR DEBT COLLECTION PRACTICES
5 ACT, FOR EXAMPLE.

6 AND RECORDING CALLS IS A WAY OF ENSURING THAT DEBT
7 COLLECTORS COMPLY WITH THE LAW AND THAT DISPUTES ABOUT
8 COMPLIANCE CAN BE EASILY RESOLVED. AND IF THE COLLECTOR CAN
9 TURN THE RECORDER ON AND OFF AT WILL, THIS UNDERMINES THAT
10 EFFORT.

11 AND FEDERAL COURTS IN THE LAST FIVE YEARS HAVE SEEN A
12 SKYROCKETING DOCKET OF CLAIMS FILED UNDER THE FAIR DEBT
13 COLLECTION PRACTICES ACT. AND RECORDING IS AN EFFORT BY THE
14 RESPONSIBLE COMPANIES, LIKE VERIZON WIRELESS, TO MAKE SURE
15 THAT ITS CUSTOMERS ARE PROPERLY TREATED IN -- IN FULL
16 COMPLIANCE WITH FEDERAL LAWS.

17 **THE COURT:** WHERE'S YOUR DEFINITION OF COMMUNICATION
18 IN YOUR BRIEF?

19 **MR. PRESTON:** I DON'T BELIEVE WE DEFINED IT. WE WERE
20 GOING TO RELY ON THE DICTIONARY DEFINITION OF THE WORD. I
21 DON'T BELIEVE --

22 **THE COURT:** YOU DON'T GIVE IT -- YOU DON'T GIVE ME A
23 DICTIONARY DEFINITION? THAT'S WHAT I WAS LOOKING FOR. I
24 DON'T HAVE A DICTIONARY UP HERE.

25 **MR. PRESTON:** MA'AM, I -- WE DIDN'T CITE A DEFINITION

1 FOR THAT WORD. THAT WAS NOT AT ISSUE IN THE BRIEFING. I'M
2 HAPPY TO FIND YOU MULTIPLE DEFINITIONS.

3 **THE COURT:** WELL, I CAN FIND MYSELF MULTIPLE -- I WAS
4 JUST SEEING IF YOU HAD ONE UP HERE.

5 **MR. PRESTON:** I'M AFRAID NOT, MA'AM.

6 (PAUSE IN THE PROCEEDINGS.)

7 **THE COURT:** WELL, MY MAIN PROBLEM WITH THE DEFENSE'S
8 ARGUMENT IS THAT IT'S -- IS THAT JUST -- IT DOES IMPLY A TERM.
9 AND I JUST DON'T SEE SOMEHOW -- HOW I CAN IMPLY THAT
10 LIMITATION IN THIS STATUTE.

11 ANYTHING ELSE ON THIS?

12 **MR. PRESTON:** NO, YOUR HONOR.

13 **MR. MESSER:** JUST ONE MORE POINT, YOUR HONOR. THE
14 ABSENCE OF LAW ON THE PARTICULAR ISSUE CUTS BOTH WAYS. I
15 SUGGEST THAT THERE IS NO CASE THAT HAS SQUARELY HELD THAT
16 PRIVACY IS NOT AN ELEMENT OF 632.7.

17 WE FULLY RECOGNIZE THE CONFIDENTIALITY CASES AND AGREE
18 WITH THOSE CASES. SO THIS KIND OF RULING IN OUR VIEW IS
19 WITHOUT PRECEDENT. AND ON THAT BASIS, WE WOULD SUBMIT.

20 **THE COURT:** OKAY. ON THE MOTION FOR INJUNCTIVE
21 RELIEF, WITH RESPECT TO THAT MOTION, THE ELEMENTS THAT NEED TO
22 BE SHOWN FOR WHAT IS OTHERWISE EXTRAORDINARY RELIEF INCLUDE
23 IRREPARABLE HARM. THE NINTH CIRCUIT HAS REPEATEDLY HELD THAT
24 PLAINTIFF MUST DEMONSTRATE IMMEDIATE THREATENED INJURY AS A
25 PREREQUISITE TO SUCH EXTRAORDINARY RELIEF. AND THAT

1 SPECULATIVE INJURY ISN'T SUFFICIENT. CITE A COUPLE CASES FOR
2 THE RECORD, CARIBBEAN MARINE SERVICES CO. VS. BALDRIGE.
3 THAT'S 844 F2D. 668, JUMP CITE 674. IT'S A NINTH CIRCUIT CASE
4 AT 1988.

5 PRIVITERA, SPELLED P-R-I-V-I-T-E-R-A, VS. CALIFORNIA BOARD
6 OF MEDICAL QUALITY ASSURANCE, NINTH CIRCUIT CASE, 1991, 926
7 F2D. 890, 897. THE ISSUE HERE IS THAT EVEN IF MR. PARISEE
8 (PHONETIC) -- IS THAT -- IS THAT HOW YOU SAY IT?

9 **MR. PRESTON:** I THINK IT'S PARISI.

10 **THE COURT:** MR. PRESTON, SORRY.

11 **MR. PRESTON:** I'M EASIER.

12 **THE COURT:** YES, YOU ARE.

13 IS THAT EVEN IF YOU HAVE A STRONG CASE ON THE ELEMENTS IN
14 TERMS OF YOUR ABILITY TO SUCCEED, I STILL DON'T SEE ANY
15 IRREPARABLE INJURY, CERTAINLY NOT INJURY THAT CAN'T BE
16 COMPENSATED BY MONETARY COMPENSATION. THEY'VE CHANGED THEIR
17 POLICY. THEY'RE NOT DOING WHAT YOU ARE CONCERNED ABOUT, SO I
18 DON'T SEE THE NEED FOR SUCH EXTRAORDINARY RELIEF.

19 AND I WOULD BE INCLINED TO DENY IT WITHOUT LEAVE OR
20 WITHOUT PREJUDICE IN THE EVENT THAT FACTS CHANGE. AND I -- I
21 JUST DON'T EVER GRANT THESE THINGS -- I MEAN, IT'S -- AN
22 EXTRAORDINARY REMEDY IS JUST THAT, IT HAS TO BE EXTRAORDINARY.

23 **MR. PRESTON:** YOUR HONOR, THE CORE OF THIS STATUTE IS
24 THE PROTECTION OF PRIVACY. IT'S THE PROTECTION OF THE RIGHT
25 TO CONTROL.

1 **THE COURT:** WHAT FACTS DO YOU HAVE TO SUGGEST THAT
2 THEY ARE GOING TO GO BACK TO THE CONDUCT THAT THEY DID BEFORE
3 THEY CHANGED THE MANNER IN WHICH THEY WERE DOING IT? DO YOU
4 HAVE ANY EVIDENCE TO SUGGEST THAT THEY'RE GOING TO DO THAT
5 NOW?

6 **MR. PRESTON:** MA'AM, IT'S NOT MY BURDEN. IT'S THEIR
7 BURDEN TO SHOW MOOTNESS. I'VE SHOWN A PRIMA FACIE CASE.

8 **THE COURT:** I'M SUGGESTING THAT YOU HAVEN'T.

9 **MR. PRESTON:** I UNDERSTAND. OKAY.

10 **THE COURT:** SO WHAT DO YOU HAVE?

11 **MR. PRESTON:** YOU HAVE THE ENTIRE RECORD IN FRONT OF
12 US. THE FACT IS THEY CHANGED THEIR POLICY ONLY AFTER WE
13 STARTED TO TAKE DISCOVERY ON WHAT THEIR POLICY WAS RIGHT NOW.
14 IT WAS TWO WEEKS, THREE WEEKS AFTER WE SERVED THAT DISCOVERY,
15 THEY CHANGED THEIR POLICY. THEY'RE LIKELY TO CHANGE IT BACK
16 AS SOON AS --

17 **THE COURT:** HOW DO YOU KNOW THAT? HOW DO YOU KNOW
18 THAT? HOW --

19 **MR. PRESTON:** BECAUSE THEY CHANGED THEIR POLICY ONCE
20 BEFORE.

21 **THE COURT:** HOW IS THAT ANYTHING OTHER THAN
22 SPECULATION? IF I PUT YOU ON THE STAND AND YOU SWORE AN OATH,
23 HOW -- WOULD YOU HAVE ANY FACTUAL BASIS TO MAKE THAT
24 ASSERTION?

25 **MR. PRESTON:** I THINK WE POSIT UNDER ARMSTRONG, IT'S

1 SUFFICIENT TO SHOW A RECURRING HARM, EITHER WITH A WRITTEN
2 POLICY THAT'S IN EFFECT AT THE TIME THAT CAUSES THE HARM HERE,
3 WHICH IS WHAT WE HAVE. IT'S ABSOLUTELY WHAT WE HAVE ON ALL
4 FOURS. OR RECURRENT INJURY. BOTH OF THOSE ELEMENTS ARE MET.
5 I HAVE MET MY PRIMA FACIE CASE FOR IRREPARABLE HARM.

6 AND THEIR VOLUNTARY CESSATION, THEY HAVEN'T CARRIED
7 THEIR -- THEIR -- THEIR AFFIRMATIVE DEFENSE OF MOOTNESS. THEY
8 HAD TO SHOW THERE WAS NO WAY IT COULD POSSIBLY RECUR. AND
9 THAT'S -- THERE'S NOTHING FROM VERIZON IN THE RECORD. THE
10 BURDEN SHIFTED TO THEM. AND THERE'S NOTHING IN THE RECORD
11 ABOUT VERIZON.

12 VERIZON HAD AN OPPORTUNITY TO SAY, NO, WE ARE ABSOLUTELY
13 NEVER GOING TO CHANGE OUR POLICY BACK. THIS IS THE POLICY
14 WE'RE GOING TO GO WITH, AND THEY'RE -- PLAINTIFFS ARE BARKING
15 UP THE WRONG TREE. WHAT THEY SUBMITTED AND SAID WAS
16 COLLECTO'S NEVER GOING TO CALL MR. LOFTON AGAIN. AND THAT'S
17 NOT AT ISSUE. THAT'S NOT IMPORTANT. WE'RE CONCERNED ABOUT
18 VERIZON'S EXISTING DEBT COLLECTORS.

19 **THE COURT:** RESPONSE?

20 **MR. MESSER:** THERE'S A TOTAL FAILURE TO SHOW AN
21 IMMINENT THREAT OF IRREPARABLE HARM. ONE, THE DELAY IN FILING
22 THE MOTION IS UNJUSTIFIED. THE -- VERIZON PRODUCED ITS OLD
23 POLICY THE PLAINTIFF CONTENDS WAS UNLAWFUL IN AUGUST OF 2012.

24 MR. LOFTON NEVER FILED A MOTION FOR PRELIMINARY INJUNCTION
25 BECAUSE HE NEVER FELT ANY IMMINENT THREAT OF IRREPARABLE HARM.

1 AND THE FACT THEY MAKE A MOTION NOW ON A CLASS BASIS SHOWS
2 THAT, FOR EXAMPLE, LOFTON'S CLAIMS ARE NOT TYPICAL OF THE
3 CLASS.

4 NOR -- THERE IS NOT -- DESPITE MASSIVE DISCOVERY, MORE
5 THAN 30 MILLION VERIZON RECORDS PRODUCED, PLAINTIFF HAS NOT
6 GOT ONE EXAMPLE OF THE VERIZON -- CURRENT POLICY EVER BEING
7 VIOLATED ON EVEN ONE OCCASION, NOT EVEN ONE. THE POLICY WAS
8 CHANGED YEAR AGO IN MARCH 2013.

9 RECURRING HARM, THERE ARE -- THERE IS ZERO EVIDENCE OF
10 RECURRING HARM. THERE IS ZERO EVIDENCE OF RECURRING EVENTS.
11 AND THIS RECORD SHOWS AN ABSOLUTE LACK OF NUMEROSITY OF THE
12 PROPOSED INJUNCTIVE CLASS.

13 NOT ONLY THAT, MR. LOFTON HIMSELF IN ALL OF HIS
14 COMPLAINTS -- FOUR OF THEM SO FAR -- HAS NEVER ALLEGED A
15 THREAT OF IMMINENT OR IRREPARABLE HARM. AND UNDER THE NINTH
16 CIRCUIT'S CASE LAST -- CITED LAST MONTH, BERGER VS. HOME
17 DEPOT, IT'S CLEAR THAT HE'S GOT TO BE A MEMBER OF THE CLASS TO
18 SEEK CLASS-WIDE RELIEF.

19 WELL -- AND THE RESPONSE BY THE PLAINTIFF WAS IN THE REPLY
20 BRIEF TO SAY, WELL, WE SHOULD BE ABLE TO -- ABLE TO AMEND OUR
21 COMPLAINT TO CONFORM TO PROOF OF THE HEARING. AND THE COURT
22 SHOULD GRANT PRELIMINARY INJUNCTION AND CLASS CERTIFICATION ON
23 THAT BASIS.

24 AND DEFENDANT STRENUOUSLY OBJECTS TO THAT AS BEING TOTALLY
25 PROCEDURALLY UNFAIR. IF THAT'S GOING TO BE THE NEW

1 ALLEGATION -- OH, LAST TIME WE WANTED TO AMEND, THEY MET AND
2 CONFERRED AND SENT US A DRAFT COMPLAINT, AND WE AGREED TO
3 STIPULATE. NO SUCH PROCESS HAS GONE IN -- ON IN THIS HEARING.
4 WE GET HIT WITH THE REPLY BRIEF, SO NO WE'RE NOT GOING TO
5 STIPULATE. AND WE MAY OPPOSE THAT MOTION IF IT'S PROPOSED.

6 THERE'S NO FOURTH AMENDMENT COMPLAINT PROPOSED. WE'VE HAD
7 NO RIGHT TO DISCOVERY AND PLAINTIFF NOWHERE TRIES TO JUSTIFY
8 THIS KIND OF PROCEDURAL UNFAIRNESS. AND SO THE MATTER IS
9 MOOT. IT -- A INJUNCTION IS UNNECESSARY BECAUSE THERE'S ZERO
10 EVIDENCE OF NONCOMPLIANCE.

11 AND ALSO VERIZON WIRELESS WILL NOT CHANGE ITS CURRENT
12 MONITORING DISCLOSURE POLICY UNLESS A COURT OF RECORD RULES
13 THAT SOME OTHER OR DIFFERENT POLICY IS LAWFUL. VERIZON
14 WIRELESS HAS NO INTEREST -- ZERO INTEREST IN VIOLATING ANY
15 LAW.

16 **THE COURT:** ANY RESPONSE?

17 **MR. PRESTON:** I THINK THAT'S A CONCESSION THAT THE
18 LAST POLICY VIOLATED THE LAW.

19 **THE COURT:** I WOULD RESPOND TO HIS OTHER SUBSTANTIVE
20 ARGUMENTS. DO YOU HAVE ANY RESPONSE TO THOSE?

21 **MR. PRESTON:** SURE. OF COURSE.

22 LOOK, THE ALLEGATION OF THE CLAIM, IT'S NOT LIKE THEY WERE
23 SANDBAGGED. THEY KNEW WE WERE ASKING FOR INJUNCTIVE RELIEF.
24 IT'S IN EVERY SINGLE COMPLAINT. SO THE IDEA THAT IT'S UNFAIR
25 THAT THEY THOUGHT, OH, WE MIGHT POSSIBLY MOVE FOR PRELIMINARY

1 INJUNCTION OR AN INJUNCTIVE CLASS, WELL, THAT'S JUST NOT THE
2 CASE.

3 AND I CAN CITE TO YOU WE DID ALLEGE IRREPARABLE HARM.
4 THAT IS ALLEGED. THOSE WORDS APPEAR IN OUR COMPLAINT.

5 THE NOTION THAT MR. LOFTON IS NOT TYPICAL IS BELIED BY THE
6 FACT THAT THIS IS AN INJUNCTIVE CLASS. YOU HAVE SHIFTING
7 POPULATIONS. IT'S DESIGNED TO ENCOMPASS A LARGE AND SHIFTING
8 POPULATION. AND IT PROTECTS ITS B2 CERTIFICATION. IT'S
9 DESIGNED TO PROTECT AGAINST UNLAWFUL PRACTICES.

10 AND THE IDEA THAT THERE ARE -- MR. MESSER IS GOING TO SAY,
11 WELL, WE'RE NOT GOING TO CHANGE OUR POLICY, THAT'S WELL AND
12 GOOD, BUT WHY WASN'T THAT DONE IN THE OPPOSITION BRIEF. WHY
13 ISN'T THERE -- THERE IS A WAY TO SHOW MOOTNESS. THERE IS A
14 STANDARD BY WHICH YOU CAN SHOW THAT, LOOK, WE'RE NEVER GOING
15 TO VIOLATE THIS LAW EVER AGAIN.

16 AND -- AND WE CITE THAT IN OUR REPLY PAPERS AND WE
17 EXPLAIN, THIS IS WHAT YOU NEED TO DO TO -- TO ESTABLISH
18 MOOTNESS. THEY DON'T COME ANYWHERE CLOSE TO THAT. THERE'S
19 NOTHING VERIZON SAYING, WE WILL NOT CHANGE OUR POLICY.

20 THERE IS NO FORMAL COMMITMENT; JUST, YOU KNOW, MR. MESSER
21 TALKING AT A COURT HEARING. THAT'S NOT WHAT'S NECESSARY.
22 WHAT'S NECESSARY IS THEY NEED TO SHOW -- AND IT'S A STRINGENT
23 SHOWING -- THAT THEIR INJUNCTIVE RELIEF IS MOOT. AND THEY
24 HAVE -- THEY HAVE NOT DONE THAT.

25 **THE COURT:** ANYTHING ELSE?

1 **MR. MESSER:** YES. PLAINTIFF HAS NOT ADDRESSED OUR
2 ARGUMENT THAT HE'S FAILED TO SHOW AN IMMINENT THREAT OF
3 IRREPARABLE HARM BECAUSE HE'S FAILED TO SHOW A SINGLE
4 VIOLATION OF THE CURRENT POLICY IN THE PAST YEAR. THERE IS NO
5 NUMEROSITY, NEARS TYPICALITY, THERE'S NO FACTUAL BASIS ON
6 WHICH TO FIND THAT THERE IS ANY RECURRING CONDUCT THAT
7 REQUIRES THE COURT INTERVENE WITH AN INJUNCTION. SO PLAINTIFF
8 HAS FAILED TO SUSTAIN HIS BURDEN ON IRREPARABLE HARM, AND THE
9 MOTION SHOULD BE DENIED.

10 **THE COURT:** MR. PRESTON, ANYTHING ELSE?

11 **MR. PRESTON:** WE'VE NOT BEEN ABLE TO TAKE DISCOVERY
12 SINCE THE REMOVAL TO FEDERAL COURT. AND YEAH, THERE'S NO WAY
13 TO SHOW -- IT -- IN THEORY, THE CURRENT POLICY THAT'S IN PLACE
14 NOW SHOULD PREVENT IPA VIOLATIONS.

15 THE QUESTION ABOUT WHETHER OR NOT THERE'S A CLASS IS
16 NOT -- A CLASS AGAINST WHOSE RIGHTS -- IPA RIGHTS HAVE BEEN
17 VIOLATED. WELL, OF COURSE THAT THERE'S NO CLASS WHOSE RIGHTS
18 HAVE BEEN VIOLATED. THAT'S NOT THE POINT OF AN INJUNCTION.
19 AN INJUNCTION PROTECTION AGAINST FUTURE VIOLATIONS. THE
20 CONCERN IS NOT THAT THEY'RE VIOLATING THE STATUTE RIGHT NOW.

21 THE CONCERN IS THEY CHANGE THEIR POLICY IN SEPTEMBER 2010
22 TO PROVIDE FOR THESE EXCEPTIONS SO THAT THEY DIDN'T TO HAVE
23 DISCLOSE RECORDING. THEY DID IT ONCE. THEY CHANGED IT BACK
24 AFTER WE STARTED TAKING DISCOVERY. AND THERE'S NOTHING IN THE
25 RECORDS THAT SHOWS IT'S MOOT BECAUSE THERE'S NOTHING IN THE

1 RECORD THAT SHOWS THEY WON'T CHANGE IT BACK AGAIN. THEY
2 ALREADY DID IT ONCE. THEY CAN DO IT AGAIN.

3 **THE COURT:** SUBMITTED, GENTLEMEN?

4 **MR. MESSER:** SUBMITTED.

5 **MR. PRESTON:** SUBMITTED.

6 **THE COURT:** ALL RIGHT. WHAT IS GOING ON WITH THE
7 RELATED MDL?

8 **MR. MESSER:** WELL, THERE'S A DEADLINE OF THURSDAY FOR
9 THE PARTIES TO DESIGNATE LEAD COUNSEL. MY FIRM WILL BE LEAD
10 COUNSEL FOR COLLECTO IN THE MDL CASE. AND I DON'T KNOW THE
11 STATUS ON THE PLAINTIFFS' SIDE.

12 **MR. PRESTON:** THERE'S NEGOTIATIONS.

13 **THE COURT:** AND WHERE IS THAT PENDING NOW?

14 (SIMULTANEOUS COLLOQUY.)

15 **MR. PRESTON:** THAT'S MASSACHUSETTS. RICHARD STEARNS.

16 **MR. MESSER:** AND WE'VE DISCUSSED -- I'VE DISCUSSED
17 WITH MR. PRESTON THE TCPA PART OF THIS CASE AND WHETHER THAT
18 SHOULD GO TO MASSACHUSETTS AND HOW WE WOULD PROCEDURALLY DO
19 THAT. AND THOSE DISCUSSIONS ARE ONGOING.

20 FOR EXAMPLE, IF WE SEVER THE TCPA PART OF THE CASE AND
21 SEND IT TO MASSACHUSETTS, THIS COURT MIGHT LOSE JURISDICTION.
22 THE IPA MIGHT GO BACK TO ALAMEDA. I DON'T KNOW -- I DON'T
23 EVEN KNOW WHETHER THAT'S PROCEDURALLY POSSIBLE. BUT WE'VE HAD
24 THOSE DISCUSSIONS AND NO DECISIONS YET.

25 **THE COURT:** WHEN WERE YOU GOING DECIDE?

1 **MR. PRESTON:** TO BE -- TO BE CLEAR, WE'RE NOT GOING
2 BACK TO ALAMEDA COUNTY. WE'RE GOING TO ALLEGE FIVE MILLION IN
3 CONTROVERSY UNDER THE CAFA, SO WE HAVE -- ARE NOT -- WE'RE IN
4 FRONT OF YOU. WE'RE NOT GOING BACK DOWN. IT'S NOT A
5 PING-PONG GAME.

6 **THE COURT:** WELL, YOU'RE FRONT OF A FEDERAL JUDGE.
7 WE JUST GOT THREE NEW JUDGES, SO YOU MAY OR MAY NOT BE WITH
8 ME. WE'LL SEE.

9 **MR. PRESTON:** NONETHELESS --

10 (SIMULTANEOUS COLLOQUY.)

11 **THE COURT:** YOU'RE NOT GOING BACK TO ALAMEDA.

12 **MR. PRESTON:** RIGHT. THERE'S A LIMIT TO THE CHANGE
13 OF VENUE. SO IT'S EVERY TIME -- YOU KNOW, IT'S DELAY AND --

14 **MR. MESSER:** WELL, THAT'S GOOD TO KNOW. IN THAT
15 CASE, WE'LL THINK ABOUT FILING A MOTION AND MAKE DECISION IN
16 THE NEXT FEW WEEKS.

17 **THE COURT:** ALL RIGHT.

18 MR. MESSNER (PHONETIC), I THOUGHT ABOUT WRITING A -- AN
19 OPINION ON THIS. I LIKE THE PRIVACY ISSUES. THE AMERICAN LAW
20 INSTITUTE IS UNDERTAKING A PROJECT BECAUSE OF THE CHANGING
21 LANDSCAPE IN PRIVACY. BUT IN THIS CASE, I'M NOT GOING TO DO
22 IT.

23 THE MOTION'S DENIED FOR THE REASONS THAT I STATED ON THE
24 RECORD.

25 THE MOTION FOR PRELIMINARY INJUNCTION IS ALSO DENIED.

1 UNFORTUNATELY, WE'RE JUST A LITTLE BIT TOO OVERWHELMED
2 RIGHT NOW. AND AS MUCH AS I'D LIKE TO SIT AND CRAFT A NICE
3 LITTLE LAW REVIEW ARTICLE OPINION ON STATUTORY INTERPRETATION,
4 I AM GOING TO DECLINE THIS TIME. PERHAPS IN SIX MONTHS, IF I
5 GET A SIMILAR CASE AND WE'VE GOT NEW JUDGES ON BOARD AND I
6 HAVE A LITTLE MORE TIME, I WILL DO THAT. BUT I THINK IT'S
7 PRETTY CLEAR. AND I'M NOT GOING TO TAKE THE TIME TO DO IT.

8 NICE EFFORT.

9 **MR. MESSER:** THANK YOU, YOUR HONOR.

10 **MR. PRESTON:** THANK YOU, YOUR HONOR.

11 **THE COURT:** ONE THING -- I GOT ON HIM, SO I'M GOING
12 TO GET ON YOU.

13 **MR. PRESTON:** YES, YOUR HONOR.

14 **THE COURT:** PAGE 14 OF 36 IN YOUR OPPOSITION, I NEVER
15 STATED IN MY OPINION IN SIMPSON WHAT THE ELEMENTS OF 637 --
16 632.7 WERE. I IDENTIFIED WHAT IT WAS THAT THE PLAINTIFF
17 ALLEGED AND INDICATED THAT IT WAS SUFFICIENT, BUT THAT IS
18 DIFFERENT FROM STATING THE ELEMENTS.

19 SO BE CAREFUL IN HOW YOU POSTURE WHAT A JUDGE HAS DONE
20 ESPECIALLY IN FRONT OF THE JUDGE WHO WROTE THE OPINION.

21 **MR. PRESTON:** THERE WAS CERTAINLY NO INTENT TO
22 DECEIVE YOU AS TO YOUR OWN OPINION, MA'AM.

23 **THE COURT:** WELL, YOU COULDN'T HAVE 'CAUSE I WENT
24 BACK AND THOUGHT -- I SAID, I DON'T EVER REMEMBER DOING THAT.
25 WENT BACK AND SURE ENOUGH, I HADN'T. I JUST MENTION IT.

1 THANK YOU, GENTLEMEN.

2 **MR. PRESTON:** THANK YOU, YOUR HONOR.

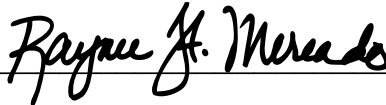
3 (PROCEEDINGS WERE CONCLUDED AT 2:42 P.M.)

4 --000--

5
6 **CERTIFICATE OF REPORTER**

7
8 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
9 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

10 I FURTHER CERTIFY THAT I AM NEITHER COUNSEL FOR, RELATED TO,
11 NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN WHICH THIS
12 HEARING WAS TAKEN, AND FURTHER THAT I AM NOT FINANCIALLY NOR
13 OTHERWISE INTERESTED IN THE OUTCOME OF THE ACTION.

14
15 

16 RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR

17 MONDAY, APRIL 14, 2014
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RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (510) 451-7530